

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

WILLIS HIGGINS)	
Claimant)	
VS.)	
)	Docket No. 195,563
CITY OF CONCORDIA)	
Respondent)	
AND)	
)	
ALLIED MUTUAL INSURANCE COMPANY)	
Insurance Carrier)	

ORDER

Respondent and its insurance carrier appealed the December 11, 1996, Award entered by Administrative Law Judge Bruce E. Moore. The Appeals Board heard oral argument on May 28, 1997.

APPEARANCES

Claimant appeared by his attorney, Beth Regier Foerster of Topeka, Kansas. Respondent and its insurance carrier appeared by their attorney, Jeffrey E. King of Salina, Kansas.

RECORD AND STIPULATIONS

The Appeals Board has considered the record and adopts the stipulations listed in the Award of the Administrative Law Judge.

ISSUES

- (1) Whether there was an intervening accident after August 21, 1994.
- (2) The nature and extent of claimant's disability.
- (3) Whether respondent is entitled to an offset for claimant's disability retirement benefits.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire record and having considered the briefs and arguments of the parties, the Appeals Board finds:

The Award by the Administrative Law Judge should be modified. The Appeals Board agrees with the finding of a work disability pursuant to K.S.A. 44-510e. However, the finding concerning the percentage loss of claimant's tasks performing ability should be modified to find that claimant has lost the ability to perform 9 of the 16 work tasks that claimant performed during the 15-year period preceding the accident. Such was the testimony of the only physician who gave an opinion on claimant's tasks loss, Ali B. Manguoglu, M.D. When the 56 percent tasks loss is averaged together with the 71 percent wage loss, the resulting work disability is 63.5 percent.

The Appeals Board finds claimant sustained a work-related injury by accident on August 21, 1994. That accident arose out of and in the course of his employment with respondent. Although claimant thereafter reported an increase in his symptoms, most notably following a boy scout camp out on September 8, 1994 when claimant bent down to pick up a tent peg, the Appeals Board finds such incidents were the direct and natural consequences of the original work-related injury. See Jackson v. Stevens Well Service, 208 Kan. 637, 493 P.2d 264 (1972).

The Appeals Board further finds that all remaining findings and conclusions enumerated in the Award by the Administrative Law Judge are accurate and appropriate and they are adopted by the Appeals Board as its own findings and conclusions to the extent they are not inconsistent with the above. The Appeals Board specifically finds respondent is not entitled to an offset or reduction in permanent partial disability benefits under K.S.A. 44-501(h). In addition to those reasons set forth in the Award, the Appeals Board also notes that the record does not establish what portion of the so-called retirement benefits are attributable to payments or contributions made by the employee. Therefore, it would not be possible to determine what amount of reduction would be appropriate if such an offset were found to be applicable, which it is not.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Bruce E. Moore dated December 11, 1996, should be, and is hereby, modified as follows:

WHEREFORE, AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR of the claimant, Willis Higgins, and against the respondent, City of Concordia, and its insurance carrier, Allied Mutual Insurance Company, for an accidental injury which occurred August 21, 1994, and based upon an average weekly wage of \$479.44 for 13.41 weeks of temporary total disability compensation at the rate of \$319 per week or \$4,277.79, followed by 263.53 weeks at the rate of \$319 per week or \$84,066.07, for a 63.5% permanent partial general disability, making a total award of \$88,343.86.

As of June 13, 1997, there is due and owing claimant 13.41 weeks of temporary total disability compensation at the rate of \$319 per week or \$4,277.79, followed by 146.71 weeks of permanent partial compensation at the rate of \$319 per week in the sum of \$46,800.49 for a total of \$51,078.28, which is ordered paid in one lump sum less any amounts previously paid. The remaining balance of \$37,265.58 is to be paid for 116.82 weeks at the rate of \$319 per week, until fully paid or further order of the Director.

All other findings and orders of the Administrative Law Judge set forth in the Award are adopted by the Appeals Board as if specifically set forth in this Order.

IT IS SO ORDERED.

Dated this ____ day of June 1997.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Beth Regier Foester, Topeka, KS
Jeffrey E. King, Salina, KS
Bruce E. Moore, Administrative Law Judge

WILLIS HIGGINS

4

DOCKET NO. 195,563

Philip S. Harness, Director